

Bill No. 30-05
Concerning: Housing – Workforce
Housing Program
Revised: 7-11-06 Draft No. 8
Introduced: October 11, 2005
Enacted: July 11, 2006
Executive: _____
Effective: December 1, 2006
Sunset Date: [[None]] December 1, 2014
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Silverman, Floreen, and Subin

AN ACT to:

- (1) establish a workforce housing program, administered by the Department of Housing and Community Affairs;
- (2) define the purposes of the program and the population who the program is intended to serve, and establish procedures to administer the program;
- (3) authorize the County Executive to set certain program parameters, including income eligibility standards[[, sale and rent control periods,]] and maximum sale prices and rents, by regulation;
- (4) define, by reference to certain mandatory and optional zoning provisions, where workforce housing must be located; and
- (5) generally provide for the operation of a County workforce housing program.

By adding

Montgomery County Code
Chapter 25B, Housing Policy
Article V, Workforce Housing

By amending

Chapter 25A, Housing, Moderately Priced
Section 25A-5

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 25B is amended by adding Article V, Workforce**
 2 **Housing:**

3 **Article V. Workforce Housing.**

4 **25B-23. Definitions.**

5 In this Article, the following words have the following meanings:

6 (a) Area-wide median income means the latest published income level
 7 determined to represent the median income for the Washington area by
 8 the U.S. Department of Housing and Urban Development, adjusted for
 9 household size.

10 (b) Consumer Price Index means the latest published version of the
 11 Consumer Price Index for all Urban Consumers (CPI-U) of the U.S.
 12 Department of Labor, or any similar index designated by regulation.

13 (c) Date of original sale means the date of settlement for purchase of a
 14 workforce housing unit.

15 (d) Date of original rental means the date that the first lease of a workforce
 16 housing unit takes effect.

17 (e) Department means the Department of Housing and Community Affairs.

18 (f) Developer means a person or other legal entity that seeks to develop a
 19 [[workforce]] housing project.

20 (g) Director means the Director of the Department or the Director's
 21 designee.

22 (h) Dwelling unit means a building or part of a building that provides
 23 complete living facilities for one family, including at a minimum
 24 facilities for cooking, sanitation, and sleeping.

25 (i) Housing Initiative Fund means the fund established under Section 25B-
 26 9.

27 (j) Workforce housing project means a housing or mixed use project where

at least 10 percent of the dwelling units, [[not counting any moderately priced dwelling units (MPDUs) and any resulting bonus density units,]] as computed under Section 25B-24(e), are sold or rented to households with incomes at or below 120% of the area-wide median income.

(k) *Workforce housing unit* means a dwelling unit in a workforce housing project that is subject to rent limits or sales controls under this Article.

(l) *Program* means the workforce housing program.

25B-24. Workforce housing program.

(a) *Establishment.* The Department must establish and administer a workforce housing program.

(b) *Purpose.* The purpose of the program is to promote the construction of housing affordable to households with incomes at or below 120% of the area-wide median income. The construction of that housing is intended to:

(1) allow households with incomes at or below 120% of the area-wide median income to have greater housing choices in the County;

(2) increase the availability of housing in the County for public employees and other workers whose income cannot support the high cost of housing that is located close to their workplace and who, as a result, are increasingly priced out of housing opportunities;

(3) assist County employers in reducing critical labor shortages of skilled and semi-skilled workers by providing housing that will be accessible to the workers' workplaces; and

(4) reduce traffic congestion by shortening commute distances for employees who work in the County but who otherwise would

live elsewhere and encouraging more employees to live in Metro Station Policy Areas.

(c) Relationship to other affordable housing programs. This program is intended to complement the moderately priced dwelling unit (MPDU) program under Chapter 25A and other County programs designed to promote affordable housing.

(d) Requirement. A developer of any subdivision with 35 or more market-rate dwelling units at one location, as defined in Section 25A-3(b), must build the number of workforce housing units, if any, that are expressly required in [[any]] the applicable zone under Chapter 59.

(e) Exclusions. In calculating the number of dwelling units in any subdivision to determine the number of workforce housing units required under this Article, the Department must not count:

(1) any moderately priced dwelling units (MPDUs) and any resulting bonus density market-rate units;

(2) any Personal Living Quarters unit built under Section 59-A-6.15, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;

(3) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A; and

(4) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size.

[[If the total number of units in a subdivision that are not counted under paragraphs (2)-(4) of this subsection will exceed the number of workforce housing units required in the subdivision, then no workforce housing units are required.]]

(f) *Exemption.* If the total number of units in a subdivision that are not counted under subsection (e)(4) is sufficient to qualify the entire subdivision to receive federal low-income housing tax credits, then no workforce housing units are required in that subdivision.

[[e)] (g) *Regulations.* The County Executive must adopt regulations under method (1) to administer this program. These regulations:

- (1) must set maximum sale prices and annual rent limits, sale price and rent ranges (which must promote a variety of different prices or rents at each workforce housing location), minimum unit type and bedroom requirements, and income eligibility standards;
- (2) must govern notice to the Department of sales and rentals, foreclosures, and other relevant procedural matters; and
- (3) should, wherever possible, be similar to or at least consistent with the regulations that govern the MPDU program.

The regulations governing eligibility must include some preference for applicants who either reside in the County or work or have received a job offer in the County.

(h) *Annual report.* Each year by March 15 the Director must report to the Executive and Council, for the previous calendar year:

- (1) the number of workforce housing units approved and built; and
- (2) each alternative location agreement approved under Section 25B-26, and the location and number of workforce housing units that were involved in each agreement.

25B-25. Execution of agreement; building permit issuance.

(a) Agreement.

(1) After the developer of a [[workforce]] housing project has obtained approval from the Planning Board of a site plan that includes the number of workforce housing units required under any applicable provision of Chapter 59 and all other necessary regulatory approvals, the Director and the developer must execute an agreement assuring compliance with this Article by the developer and any successor in interest. The Director must attach a copy of the approved site plan to [[the]] this agreement.

(2) The agreement must incorporate a staging plan for the construction of workforce housing units, the mix of dwelling unit sizes and types, and the maximum selling price or annual rent for each unit. The staging plan must require all workforce housing units to be built before or at the same time as the other dwelling units. Where appropriate, the agreement must reflect conditions required as part of other regulatory approvals.

(3) The agreement must require that the number of efficiency and one- bedroom workforce housing units each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision. The Director must not approve an agreement that reduces the number of bedrooms required by this subsection in any workforce housing unit.

(b) Issuance of building permit. The Director of Permitting Services must not issue a building permit for any development where workforce housing units are required under Chapter 59 until the agreement

required by subsection (a) is executed. After an agreement is executed under subsection (a), the Director must certify to the Director of Permitting Services before a building permit is issued that all applicable requirements of this Article have been met. If all workforce housing units are not built before or at the same time as other dwelling units as required in the staging plan, the Director of Permitting Services may:

- (1) withhold any later building permit for any part of the same development until all workforce housing units designated in the staging plan are built;
- (2) issue a stop work order, effective until all workforce housing units designated in the staging plan are built; or
- (3) withhold any use and occupancy permit for other units in the development until all workforce housing units designated in the staging plan are built.

25B-26. Alternative location agreement.

(a) The Director may approve a workforce housing agreement, in addition to the agreement required by Section 25B-25, that allows an applicant [[for development of a high-rise residential building]], instead of building some or all of the required number of workforce housing units on-site, to provide at least the same number of units at another location in the same planning policy area (as defined in the County Growth Policy), only if the Director finds that:

(1) either:

(A) the public benefit of locating at the proposed alternative location [[outweighs]] is equivalent to the value of locating workforce housing units in each applicable development;

or

- (B) building a sufficient number of workforce housing units at the original site would require the applicant to change the type of building construction used; and
- (2) building the workforce housing units at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.
- (b) To satisfy the requirements of this Section, an applicant may:
- (1) build, or convert from non-residential use, the required number of new workforce housing units at a site approved by the Director;
or
- (2) [[buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as workforce housing units; or]]
[[3]] return to workforce housing unit use, and rehabilitate as necessary, existing workforce housing units for which price controls have expired.
- (c) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of workforce housing units. Each agreement under this Section must also require that each workforce housing unit provided at an alternative location under this Section must be identical in type of unit and number of bedrooms to the workforce housing units that the applicant would have built on site.
- 25B-27. Control of sale prices; rent limits; income eligibility; foreclosures.**
- (a) Sales; control period. The sale price of a workforce housing unit must be controlled under this subsection for [[10]] 20 years after the date of original sale. During the applicable control period, a workforce housing

unit must only be sold to an individual with a household income that does not exceed 120% of the area-wide median income or a lower amount set by regulation. Any workforce housing unit offered for sale, or for resale during the control period, must first be offered exclusively for 60 days to the Department and the Housing Opportunities Commission, in that order. The Department and the Commission may buy a workforce housing unit at any time during the control period, and may resell the unit to an eligible person. A resale by the Department or Commission starts a new control period.

(b) Resale price during control period.

(1) Resale price. Except in a foreclosure proceeding, a workforce housing unit constructed or offered for sale under this Article must not be resold during the applicable control period for a price greater than the [[unit's original]] [[selling price]] [[appraised market value (as defined by applicable regulations)]] [[plus:]] maximum sale price for a similar new workforce housing unit under applicable regulations on the date of the resale.

[[(1) a percentage of the unit's original [[selling price]] appraised market value equal to the increase in the cost of living, as determined by the metropolitan area Consumer Price Index;]]

[[(2) the fair market value of capital improvements made to the unit between the date of original sale and the date of resale;]]

(2) Return to seller. The Department must supplement any bona fide price that the seller of a workforce housing unit receives from the

216 buyer under paragraph (1) so that the seller receives a total of the
 217 original sale price of the unit plus:

218 [(3)] (A) an allowance for closing costs which were not paid
 219 by the initial seller, but which will be paid by the initial
 220 buyer for the benefit of a later buyer;

221 (B) the fair market value of any capital improvement that the
 222 Director finds was needed to maintain the equity of the
 223 unit;

224 [(4)] (C) a percentage, set by regulation, of [(the unit's price
 225 appreciation since its most recent sale,)] the difference
 226 between the unit's appraised market value (as defined by
 227 applicable regulations) when the seller bought the unit and
 228 its appraised market value when the seller offered the unit
 229 for sale, which must not exceed 50% of the total price
 230 appreciation; and

231 [(5)] (D) a reasonable sales commission.

232 The Department may use funds in the Housing Initiative Fund to
 233 pay all or part of the amount returned to the seller under this
 234 paragraph, to the extent provided in applicable regulations.

235 (3) *Payment to Housing Initiative Fund.* If the bona fide price the
 236 seller receives is greater than the amount allowable under
 237 paragraph (2), the seller must pay the difference to the Fund. The
 238 Director must find that the price and terms of a sale covered by
 239 paragraph (1) are bona fide and accurately reflect the entire
 240 transaction between the parties so that the full amount required
 241 under this Section is paid to the Fund.

242 (c) *Resale price after control period ends.*

(1) For the first sale of a workforce housing unit after the applicable control period ends that exceeds the allowable price specified under subsection (a), the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of:

(A) the original [[selling price]] appraised market value;

(B) a percentage of the unit's original [[selling price]] appraised market value equal to the increase in the cost of living as determined by the metropolitan area Consumer Price Index;

(C) the fair market value of capital improvements made to the unit between the date of original sale and the date of resale; and

(D) a reasonable sales commission.

The Director must adjust the amount paid into the Housing Initiative Fund in each case so that the seller retains at least \$10,000 of the excess of the resale price over the sum of the items in subparagraphs (A)-(D).

(2) The Director must find that the price and terms of a sale covered by paragraph (1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under paragraph (1) is paid to the Fund. When the Director finds that the amount due the Fund is accurate and the Director of Finance receives the amount due, the Director must terminate the controls imposed by this section and execute a release of all restrictive covenants.

(d) Limits on rents. Unless the unit was previously sold under subsection

(c), any workforce housing unit built or offered for rent under this Chapter must not be rented for 99 years after the date of original rental at a rent greater than the rent allowed for workforce housing units under this Article and applicable regulations. Rent may include parking but does not include utilities when they are paid by the tenant. Different rents must be set when utility costs are paid by the owner and included in the rent. During the applicable control period, a workforce housing unit must only be rented to an individual with a household income that does not exceed the limits set under this Article.

(e) Foreclosure. If a workforce housing unit is sold in a foreclosure proceeding begun by a lending institution, the Director must terminate the workforce housing controls and execute a release of all restrictive covenants if all proceeds of the sale, if any, that must be paid to the Housing Initiative Fund have been paid. If a foreclosure sale of a workforce housing unit occurs during the applicable control period, any price paid at the foreclosure sale that exceeds the price established under subsection (b), plus any reasonable costs and fees of foreclosure, must be paid into the Housing Initiative Fund. If a workforce housing unit is foreclosed after the control period, subsection (c) applies. If the unit sold was a rental unit, the Department must calculate the sale price that would have been permitted at the date of original rental as if the unit had been originally offered for sale.

(f) Bulk sales. This section does not prohibit the bulk sale or transfer of all or some rental workforce housing units if the buyer is bound by all covenants and controls on the workforce housing units.

25B-28. Compliance.

(a) Covenants.

(1) This Article applies to the owner~~[[,]]~~ and any successor in interest, assignee, or other person with a legal or equitable interest in ~~[[the]]~~ a workforce housing unit. Before recording the plat for a workforce housing project, the owner must execute and record covenants assuring that:

(A) the restrictions of this Article run with the land;

(B) the covenants are binding on the owner, any assignee, mortgagee, or later purchaser, and any other party that receives title to the property; and

(C) the County may create a lien to collect that portion of the sale price or foreclosure sale price of a workforce housing unit which exceeds the approved resale price.

(2) Any covenant executed to satisfy paragraph (1) must be senior to all instruments securing permanent financing.

(b) Later deeds. The grantor must clearly and conspicuously state, in any purchase and sale agreement and any deed or instrument conveying title to a workforce housing unit, and the grantee must clearly and conspicuously acknowledge, that the unit is subject to this Article and the restrictions in the covenants until all restrictions are released under Section 25B-27 or another provision of law. Any deed or other instrument conveying title to a workforce housing unit during the control period must be signed by both the grantor and grantee. When a deed or other instrument conveying title to a workforce housing unit is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

(c) Violations; enforcement.

- (1) Any violation of this Article or regulations adopted under it is a class A violation.
- (2) An occupancy permit must not be issued for any building to any applicant, or a successor or assign of any applicant, for any construction which does not comply with this Chapter. The Director of Permitting Services may deny, suspend, or revoke any applicable building or occupancy permit if the Director finds that the applicant or permittee has committed a violation of this Article. The Planning Board may revoke any previously approved preliminary plan of subdivision, site plan, or development plan, if the Board finds a violation of this Article.
- (3) The Director may take legal action to stop or cancel any transfer of a workforce housing unit if any party to the transfer does not comply with all requirements of this Article. The Director may recover any funds improperly obtained from any sale or rental of a workforce housing unit in violation of this Article, plus costs and interest at the rate prescribed by law from the date a violation occurred.
- (4) In addition to or instead of any other available remedy, the Director may take legal action to:
- (A) enjoin a workforce housing unit owner who violates this Article, or any covenant signed or order issued under this Article, from continuing the violation; or
- (B) require an owner to sell a workforce housing unit owned or occupied in violation of this Article to the County, the Housing Opportunities Commission, or an eligible person.

Sec. 2. Section 25A-5 is amended as follows:

25A-5. Requirement to build MPDU's; agreements.

* * *

- (c) When the development at one location is in a zone where a density bonus is allowed; and
- (1) is covered by a plan of subdivision,
 - (2) is covered by a plan of development or a site plan, or
 - (3) requires a building permit to be issued for construction,
- the required number of moderately priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location, not counting any workforce housing units required under Chapter 25B.

* * *

Sec. ~~[[2]]~~ 3. Effective date; Applicability; Expiration.

- (a) This Act takes effect on December 1, 2006. The County Executive must submit all regulations necessary to implement Article V of Chapter 25B, inserted by Section 1 of this Act, to the Council by October ~~[[1]]~~ 11, 2006.
- (b) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which an application for a local map amendment, development plan, project plan, site plan, or ~~[[a]]~~ preliminary plan of subdivision was ~~[[approved]]~~ filed before ~~[[this Act took effect]]~~ December 1, 2006, unless the applicant voluntarily includes workforce housing units in that development.
- (c) Article V of Chapter 25B, as inserted by Section 1 of this Act, does not apply to any development for which an application for a local map amendment, development plan, project plan, site plan, or preliminary plan of subdivision is filed after December 1, 2014.

378 *Approved:*

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George L. Leventhal, President, County Council

Date

381 *Approved:*

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383

Douglas M. Duncan, County Executive

Date

384 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date